

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 86652-001

v

American Community Mutual Insurance Company
Respondent

Issued and entered
This 23rd day of January 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 10, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on December 17, 2007.

The Commissioner notified American Community Mutual Insurance Company (ACM) of the external review and requested the information used in making its adverse determination.

The case involves medical issues so the Commissioner assigned it to an independent review organization (IRO) which provided its recommendation to the Commissioner on December 31, 2007.

II
FACTUAL BACKGROUND

The Petitioner suffered posterior right thoracic pain for about 4 months before seeking

treatment from her primary care physician on November 13, 2006. Treatments over a period of several months included osteopathic and chiropractic manipulation, physical therapy, and trigger point injections but none were successful. When the Petitioner failed to make adequate progress, an RS-4i stimulator and RS-FBG full back conductive garment were recommended and then prescribed by her primary care physician.

ACM denied coverage, asserting that the devices are experimental or investigational. The Petitioner appealed but ACM maintained its denial and issued a final adverse determination dated October 1, 2007.

III ISSUE

Is ACM correct in denying the Petitioner coverage for the RS-4i stimulator and RS-FBG full back conductive garment?

IV ANALYSIS

Petitioner's Argument

The Petitioner's primary care physician (PCP) prescribed the RS-4i and the RS-FBG to be used at home by the Petitioner to relax muscle spasms, prevent or retard muscle atrophy, maintain or increase range of motion, and relieve acute and chronic pain. The PCP submitted a letter of medical necessity stating that the Petitioner cannot manage her treatment with the use of conventional supplies and accessories.

The Petitioner believes ACM should approve coverage for the devices as medically necessary for her condition since all other alternatives have been exhausted without success.

American Community Mutual Insurance Company's Argument

The Petitioner's file was reviewed by ACM's grievance committee and an independent medical consultant. Based on criteria specified in the Petitioner's certificate of group medical insurance (the certificate), the contract that defines the Petitioner's health care coverage, ACM

concluded that the use of the RS-4i and RS-FBG are experimental or investigational for the Petitioner's condition and therefore not a covered benefit.

The certificate provides benefits for services that are necessary to the care or treatment of an illness or injury and says "Necessary to the Care or Treatment of Illness" means

medical, surgical, psychiatric, Substance Abuse or other health care services, supplies, Treatments, procedures, drug therapies or devices which are determined by American to be necessary to treat the Insured Individual's condition. Determination of necessity is done on a case by case basis and considers several factors including, but not limited to, the standards of the medical community. The fact that a Doctor has performed or prescribed a procedure or Treatment or the fact that it may be the only available Treatment for a particular injury or sickness does not, alone, mean that it is Necessary to the Care or Treatment of an Illness. In addition, the service must, in our judgment, be:

1. consistent with the diagnosis of and prescribed course of Treatment for the Insured Individual's condition;
2. required for reasons other than the convenience of the Insured Individual or his or her Doctor, and not required solely for custodial, comfort or maintenance reasons;
3. performed in the most cost-efficient type of setting appropriate for the condition;
4. rendered at the frequency which is accepted by the medical community;
5. likely to be effective in treating the Insured Individual's condition;
6. not for Cosmetic purposes; and
7. not an Experimental or Investigational procedure.

ACM's independent peer reviewer determined that the Petitioner's use of an interferential muscle stimulator for her condition is considered to be experimental or investigational, and therefore not medically necessary as defined in the certificate. Therefore, ACM maintains its decision regarding the RS-4i stimulator and RS-FBG full back conductive garment as experimental or investigative was correct.

Commissioner's Review

The Commissioner notes that the Petitioner's policy contains the following exclusionary language under *Section 4 -- Benefit Exclusions and Limitations*:

A. THE FOLLOWING EXCLUSIONS AND LIMITATIONS APPLY TO ALL BENEFITS OTHER THAN LIFE INSURANCE:

No benefits are provided for:

* * *

5. Charges which are not Necessary to the Care or Treatment of an Illness, or which are illegal, or which are Experimental, Investigational or Unproven.

In reviewing adverse determinations that involve questions of medical necessity or clinical review criteria, the Commissioner obtains the analysis and recommendation of an IRO. The IRO expert for this case is board certified in physical medicine and rehabilitation and in pain management, holds an academic appointment, and has been in active practice for more than 10 years. The IRO reviewer determined the Petitioner's RS-4i stimulator and RS-FBG full back conductive garment were experimental or investigational for treatment of her condition.

The IRO reviewer's conclusion was summarized in the report:

[T]here is no peer-reviewed literature to support the safety and efficacy for the use of the RS-4i stimulator and RS-FBG full back conductive garment. * * * The [reviewer] indicated that these devices are not generally accepted and utilized for the treatment of chronic pain. The [reviewer] also indicated that a randomized controlled trial found that inferential stimulators had no effect on soft tissue or musculoskeletal pain.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; the IRO's analysis is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the conclusion of the IRO reviewer that the use of the RS-4i stimulator and RS-FBG full back conductive garment for the Petitioner are experimental or investigational and therefore finds they are not a covered benefit under the terms of the certificate.

**V
ORDER**

The Commissioner upholds American Community Mutual Insurance Company's adverse determination of October 1, 2007. ACM is not required to provide coverage for the Petitioner's RS-4i stimulator and RS-FBG full back conductive garment.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham

County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.